

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2001-006342

08/10/2011

HON. CAREY SNYDER HYATT

CLERK OF THE COURT

C. Brown

Deputy

IN RE THE MARRIAGE OF
CYNTHIA LEE THIMMESCH

TERI D MCCALL

AND

PETER ALLAN THIMMESCH

PETER ALLAN THIMMESCH
11337 STONEHOUSE PL
POTOMAC FALLS VA 20165

JUDGE GATES
JUDGE MCCOY

ORDER

This Court is in receipt of Respondent's Notice of Motion and Motion to Request a Change of Judge, filed on July 21, 2011, which was forwarded to this division for disposition in accordance with A.R.S. § 12-409(A).

Pursuant to Rule 42(f)(2)(D), if a party makes proper service of an affidavit that meets the requirements of A.R.S. § 12-409(A) seeking to change the assigned judge for cause, the matter must be heard by another judge and the issue decided by a preponderance of the evidence. However, before the court sets this matter for an evidentiary hearing to resolve disputed issues on the alleged bias, prejudice, or interest of the assigned judge, the court must first determine whether or not the affidavit as a matter of law states grounds that, if proven, would justify disqualification under A.R.S. § 12-409. *See, e.g. Mervyn's v. Superior Court*, 179 Ariz. 359, 361, 879 P.2d 367, 369 (App. 1994). In *Smith v. Smith*, 115 Ariz. 299, 564 P.2d 1266 (App. 1977), the Arizona Court of Appeals recognized that, "the bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source and not from what the judge has done in his participation in the case. *United States v. Grinnel Corp.*, 384 U.S. 563, 86 S.Ct. 1698, 16 L.Ed 2d 778 (1966)." *Id.* At 303.

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Respondent indicates that he only recently learned that the assigned judge was a partner in a law firm with which Respondent had a prior attorney/client relationship in and around 1999. As a result, Respondent's recent request of the assigned judge to recuse herself from the case for all further proceedings was granted by order dated July 26, 2011. That order also demonstrates that the assigned judge was unaware of Respondent's relationship with her former law firm and one of her former partners until it was brought to her attention by the instant motion. Respondent has obtained the relief he requested within the instant motion based upon the alleged newly-discovered facts. In that context, this court has reviewed all of the allegations made by Respondent in support of removing the assigned judge for cause, and finds that none of the allegations presented are supported by an affidavit alleging bias, prejudice or interest of the assigned judicial officer arising from an extra-judicial source. The allegations presented involve the judge's participation in the case prior to any knowledge by the judge of Respondent's prior relationship with the judge's former law firm.

Accordingly,

IT IS ORDERED denying the Motion To Request a Change Judge, as it relates to a challenge for Cause, filed by Respondent on July 21, 2011.

IT IS FURTHER ORDERED affirming the reassignment of this case to Judge Scott McCoy for all further proceedings, pursuant to Judge Gate's recusal order dated July 26, 2011.

/s/ HONORABLE CAREY SNYDER HYATT

HONORABLE CAREY SNYDER HYATT
JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.